the reference relied upon by the Office. Additionally, claims 3, 7, 10-12 and 15 are rejected under 35 U.S.C. 103(a) as being obvious in light of the '274 patent.

Applicant respectfully traverses the above rejections. First, a summary of the subject invention is provided. In a tier-priced industry, the use of a financial instrument can guarantee commodity delivery and lower the cost of delivering the commodity. A buyer purchases a tier-priced commodity bundled with a financial instrument from a commodity seller. In this example the buyer negotiates the purchase of the bundled commodity and financial instrument with the commodity seller. The financial instrument would be triggered and executed to absorb the additional costs of purchasing spot power under the conditions described in the financial instrument. In the preferred embodiment the tier-priced commodity is electrical power being sold by a generating utility or broker and the financial instrument is an insurance policy or hedging contract. The buyer may be any consumer of the purchased commodity (i.e. an individual, a large manufacturing concern, a rural cooperative, a municipality or another generating utility) and the seller may be a commodity generating utility or commodity reseller. In one embodiment, the financial instrument is offered by the commodity provider along with the commodity as a bundled product (the purchase price of the commodity includes the purchase price of the financial instrument used to guarantee the delivery of the commodity). In an alternative embodiment, the buyer purchases the financial instrument and the commodity separately. In this example the financial instrument is purchased from a financial instrument broker such as an insurance company (in the case of an insurance policy) or brokerage house (in the case of a hedging contract or derivative contract).

More specifically, an insurance policy can be used to protect against an interruption in service to a customer (in this example a municipality). A municipality purchases interruptible power

from a generating utility. The municipality has also purchased an insurance policy as part of a bundled product from the generating utility or an insurance company such as the financial instrument broker. If there is no interruption in service then the municipality receives its power as contracted from the generating utility and there is no need to purchase spot power from another utility (or power pool). Purchasing a commodity supported by an insurance policy allows the municipality to purchase power at a reduced interruptible rate. The insurance policy takes effect if there is an interruption in service governed by the terms of the policy. Typically, the terms of the insurance policy will cover foreseeable interruptions and not force majeure events. The insurance policy is designed to take into account the risks associated with purchasing interruptible power. These risks include historical data regarding the weather in and around the municipality (the consuming area), the current/predicted future capacity of the generating utility and the current/predicted future demands of the municipality (the load profile). If there is an interruption in service, the insurance policy will provide the finances necessary to allow the generating utility to purchase or generate needed power to supplement the interruption. In the case where the municipality holds the insurance policy (purchased it separately from the commodity) the financial proceeds of the policy are paid to the generating utility or an alternative source or a transmitting utility to augment supply by purchasing or generating additional power. With the insurance policy covering the cost of purchasing expensive spot power, the alternative source (the providing utility or power pool) would transfer the supplemental power to the municipality through the generating utility or through another system (transmitting/distributing utility) depending upon the circumstances.

When a municipality (or any customer for that matter) is the insurance policy holder, an agreement among the electricity provider, the insurance provider, and the end-user would be

structured to provide interruptible power under a mutually acceptable set of circumstances. This agreement allows the generating utility, through their trading floor, to purchase power for interruptions on behalf of the municipality (including the end users), using funds provided by the insurance policy held by the municipality. In an alternative embodiment the end-users would contract directly with the generating utility and the insurance provider.

Thus, independent claims 1, 9, 12, 13, 14 and 15 all require:

a) determining a first price for a commodity at a first tier;

b) determining a second price for said commodity at a second tier;

c) determining a third price for a financial instrument designed to indemnify against at least one risk associated with purchasing said commodity at said second tier; and

d) offering said commodity at said second tier for sale at a fourth price; wherein said fourth price is equal to or higher than the sum of said second price and said third price.

The '247 patent neither discloses nor suggests "determining a third price for a financial instrument designed to indemnify against at least one risk associated with purchasing said commodity at said second tier" nor "offering said commodity at said second tier for sale at a fourth price, wherein said fourth price is equal to or higher than the sum of said second price and said third price. The '247 patent relates to energy auctions, not hedging energy prices through the use of an insurance vehicle. A summary of the '274 patent follows. The '274 invention provides an auction service that will stimulate competition and facilitate the consumer's ability (and that of resellers) to make economic choices between providers. In this method and system, providers supply energy (i.e., electric power or natural gas) to end users (or resellers) in accordance with economic incentives (e.g., lowest price) resulting from a bidding process between participating providers, administered

by a bidding service entity through operation of a central processor, a computer referred to as a bidding moderator (the "Moderator"). Through this auction, Providers will be apprised of the bids of competing Providers and have an opportunity to modify their bids accordingly.

Each of the Providers transmits to the Moderator the rate it is willing to charge (or other economic incentive it is willing to offer) for electric power or natural gas to be provided to an end user or group of end users, over some particular period of time. This "bid" may be lower than that Provider's established rate for any of several reasons (e.g., the Provider has excess generating or production capacity at that time). The Provider may, for example, also decide for capacity or competitive reasons to place different bids on energy to be provided, for example, to different end users at different times of day and at different destinations (e.g., with higher prices for electric power supplied during daily peak demand periods or for power delivered to destinations at greater distances from the Provider's power generation facilities). The Provider may change its bids as often as it likes as marketplace demands for energy change or in response to competitors' bidding activities.

The Moderator collects this bid information from all the Providers, sorts it according to the rules of the auction (e.g., sorting it among delivery destinations—such as the grid interfaces of local electric distribution companies serving end users), and may further process this bid information, for example, to select Providers for particular end users. This provider selection information may include, for example, a prioritization of the Provider selection in accordance with Providers' bids or the designation of a selected Provider or a default Provider. The Moderator then transmits selected portions of this information to a control computer associated with each end user or group of end users, as well as to participating Providers' energy network management centers. Each control computer gets the rate information and/or provider selection information from the Moderator

that pertains to the end user or group of end users with whom the control computer is associated. The Moderator gives each Provider bid information from other Providers for at least a portion of the end users in regard to which any Provider has submitted a bid.

A control computer may be operated by the Moderator, by an end user associated with a control computer (e.g., by the energy manager of a large industrial customer), or by the local energy distribution company that distributes energy to the end user associated with a control computer. For some end users, the Moderator will perform the functions of the control computer, perhaps using an adjunct computer to the Moderator.

From the list of all Providers providing bid information to the Moderator, each control computer (or the Moderator) can select those Providers from whom participating end users will be provided electric power or natural gas and can change that selection at any time. After each new bid is submitted by a Provider and is processed by the Moderator, the rate and/or provider selection data will be transmitted to the relevant control computers (or retained by the Moderator if the Moderator will perform the functions of the control computer, including selecting a Provider for each set of end users) and rate information will be distributed to some or all of the Providers in order to implement the auction. A Provider, for example, may not be interested in receiving the bids of other Providers who are not active in the same geographic regions. All Providers will have the opportunity thereafter to submit a lower or higher bid for any end user or group of end users to whom they wish to supply electric power or natural gas.

Each Provider of electric power manages its power generation and/or power provisioning activities (e.g., buying and selling power in the wholesale markets) in response to periodic reports of end users' actual usage transmitted by the Moderator to the selected Provider. In response to such

reports, this Provider can adjust its power generating or provisioning capacity to reflect higher or lower expected usage as these periodic reports are received throughout the day, month or year. Each selected Provider of natural gas manages its gas production and/or gas provisioning activities (e.g., buying and selling natural gas in the wholesale markets) in response to similar periodic reports of end users' actual usage transmitted by the Moderator to such Provider.

Through this bidding process, Providers can compete to supply electric power or natural gas to end users based on available capacity, delivery destinations, volume discounts, peak period requirements, etc. Providers can also manage their power generation, gas production and/or energy provisioning activities by adjusting their bids from time to time, depending on capacity utilization or other energy availability factors. And end users (and resellers) can easily make economic choices among competing Providers.

I. The '274 Patent Does Not "Determine A Third Price For A Financial Instrument To Indemnify Against A Risk."

On page 3 of the subject Office Action, it is asserted that the '274 patent teaches "determining a third price for a financial instrument designed to indemnify against at least one risk associated with purchasing the commodity at the second tier" at column 11, lines 58-64 of the '274 patent, which reads:

> The competing Providers bid for customers by transmitting to the Moderator the economic incentive each Provider will offer for supplying energy to different end users or groups of end users. The economic incentive presently contemplated as being most usual is the rate (amount of money charged per unit of energy). However, many other kinds of economic incentive may be offered, such as a credit toward other services (e.g., frequent flyer points) or a credit toward an additional rebate that may be offered if a user's energy usage for a given period rises above a threshold.

The above excerpt from the '274 patent does not relate to **financial instruments that indemnify against risk** (i.e. insurance) in any way. The above passage from the '274 patent instead states that competing commodity Providers can include **incentives** in their bids to end users. An example of one such incentive is "frequent flyer points". Clearly, the differences between insurance and frequent flyer points are readily recognizable and too numerous to list. Further, the reference in the '274 patent to an energy provider offering credits as part of its bid to a potential user in no way anticipates the implementation in independent claims 1, 9, 12, 13, 14 and 15 of the present invention of **"determining a third price for a financial instrument designed to indemnify at least one risk associated with purchasing the commodity at the second tier."**

II. The '274 Patent Does Not "Offer The Commodity At The Second Tier At A Fourth Price Equal To Or Higher Than The Sum Of The Second Price And The Third Price."

Again on page 3 of the subject Office Action it is asserted that the '274 teaches "offering the commodity at the second tier for sale at a fourth price wherein the fourth price is lower than the first price and equal to or higher than the sum of the second price and the third price" at column 9, lines 16-18 and lines 34-40; and column 14, lines 34-41, which read:

> Providers transmit their most economically advantageous rates (or other economic incentives) as bids to the Moderator; . . .
>
> Using the information received from the Moderator, each control computer selects the Provider offering the lowest rate (or best economic value) at that time to the end users associated with that control computer (after applying any decision rules formulated and inputted by the control computer's administrator) and transmits such selection to the Moderator; . . .
>
> EAS can also accommodate those end users who wish to employ a strategy of purchasing power or natural gas at the lower of the bid price in the auction or the price they agreed to pay a contract Provider under a term contract.

The above three passages from the '274 patent merely state that the Providers transmit bids to the Moderator, that the control computer selects the Provider with the lowest bid based on information received from the Moderator, and that the end users can elect either the bid price or a contract price they have with a Provider. Nowhere does the above '274 patent text describe a **pricing structure**, as opposed to an **auction**, in which a commodity traditionally priced at a certain price tier (e.g. second tier) is actually **priced differently from the second tier price**. More specifically, this '274 text does not even hint at the calculus of independent claims 1, 9, 12, 13, 14 and 15 of the subject invention in which the **novel** second tier price is limited to being **"equal to or higher than the sum of the second tier price and the third (financial instrument) price".** Instead, the above '274 patent text merely describes a generic auction in which bids are made, the lowest bid is ascertained, and the purchaser can choose between the lowest bid price and a price in a preexisting contract. There is no discussion whatsoever of tiered commodity pricing and the use of insurance or other financial instruments to hedge against a risk associated with the commodity at this price if the risk should come to be.

For the reasons stated above, applicant respectfully requests allowance of the subject application.

Respectfully submitted,

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By_____

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